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Supreme Court of the United States

OCTOBER TERM, 1935.

No. 114.

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands,

Petitioner,

against

THE NATIONAL CITY BANK OF NEW YORK,

Respondent.

SUPPLEMENTARY BRIEF FOR RESPONDENT SUBMITTED BY LEAVE OF THE COURT

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It is the contention of the Respondent that the question whether the National Bank Act and the Federal Reserve Act extend to the Philippine Islands has no bearing on the question whether the Philippine Government, having collected an income tax, as permitted by the National Bank Act, has the power to impose and collect, in addition, taxes on the capital and deposits of the Philippine Branches of the Respondent.

The question whether a national bank could be incorporated under the National Bank Act, with its head

office in the Philippine Islands, is not involved in this case.

In case the Court should consider this question material, however, it is submitted that Congress has clearly disclosed an intent that the National Bank Act and the Federal Reserve Act should extend to the Philippine Islands. This appears from a chronological review of the pertinent acts of Congress.

I. The National Bank Act was originally enacted on February 25, 1863 (12 Stat. 665, Ch. LVIII).

As originally enacted, it contained no provision authorizing the States to tax national banks. Such a provision was enacted on June 3, 1864 (13 Stat. 99, Ch. 106, Sec. 41, p. 112).

This statute has been amended from time to time and is now Section 5219 of the Revised Statutes. (See our former brief, pp. 23-25.)

On February 25, 1927, the National Bank Act was amended (40 Stat. 1224, Ch. 191) by an Act entitled "An Act to further amend the National Banking Laws and the Federal Reserve Act and for other purposes."

Section 6 of that Act amended Section 5155 of the Revised Statutes relating to local branches of national banks and contained the following provision referring to the Federal Reserve Act (post, pp. 8-11).

> "(g) This section shall not be construed to amend or repeal Section 25 of the Federal Reserve Act as amended authorizing the establishment by national banking associations of branches in foreign countries or dependencies or insular possessions of the United States."

This provision was continued in the Act of August 23, 1935, Ch. 614, Sec. 305 (U. S. C., Compact Edition,

October, 1925, Special Pamphlet 99, p. 88) amending 12 U. S. C. A., Sec. 36, of the National Bank Act, relating to local branches of national banks.

II. R. S. Section 1891, which was originally contained in the first edition of the Revised Statutes of 1874, provides:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States."

III. On March 30, 1891, this Court handed down its decision in *Talbott* v. *Silver Bow County* (139 U. S. 438, 442), in which it held:

> "The national banking system was national in its design, co-extensive in its operation with the territorial limits of the United States."

IV. The Philippine Islands were ceded to the United States by the treaty of peace with Spain on April 11, 1899 (48 U. S. C. A., Sec. 1001); and they thereupon became and are still "dependencies" of the United States.

V. On July 1, 1902, Congress passed the so-called Foraker Act, providing a temporary government for the Philippines (32 Stat. 691), Section 1 of which contains the following provision:

> "The provisions of Section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands."

The intention of Congress, however, that the National Bank Act should extend to the Philippine Islands was disclosed by Section 85 of the Foraker Act, which provided:

> "That the treasury of the Philippine Islands and *such banking associations in said islands* with a paid up capital of not less than two million dollars *and chartered by the United States* or any State thereof as may be designated by the Secretary of War and the Secretary of the Treasury of the United States shall be depositories of public money of the United States, subject to the provisions of existing law governing such depositories in the United States; *Provided,* That the treasury of the government of said islands shall not be required to deposit bonds in the Treasury of the United States, or to give other specific securities for the safe-keeping of public money except as prescribed, in his discretion, by the Secretary of War."

This Section, making it lawful to deposit government moneys in "banking associations in said Islands * * * chartered by the United States" evidently contemplates that national banking associations may be incorporated in the Philippine Islands, and therefore that the National Bank Act, in all its provisions, extends to those Islands.

The same intent is expressed in Section 8 of the Act of March 2, 1903, Ch. 980 (32 Stat. 952) entitled "An Act to establish a standard of value and to provide for a coinage system in the Philippine Islands," as amended (48 U. S. C. A., Sec. 1153), which provides that silver certificates, issued by the Treasurer of the Philippine Islands, "when held by *any banking asso-*

ciation in said islands, may be counted as a part of its lawful reserve."

This provision refers to the reserves of National Banking Associations operating in the Philippines under the National Bank Act.

VI. The Federal Reserve Act was originally enacted on December 23, 1913 (38 Stat. 251, Ch. 6).

Section 19, para. 21, of that Act provided:

> "National banks located in Alaska or outside the continental United States may remain non-member banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks, *except in the Philippine Islands,* may; with the consent of the Reserve Board, become member banks of any one of the reserve districts, and shall, in that event, take stock, maintain reserves, and be subject to all the other provisions of this Act."

This provision contemplates that national banks may be located "outside the continental United States," including the Philippine Islands. Such banks are required to "comply with all the conditions *now provided by law regulating them*"; that is, with the provisions of the National Bank Act regulating national banks. In other words, it necessarily follows from the first clause of this provision that the National Bank Act extends to the Philippine Islands.

That national banks, subject to the National Bank Act, may be located in the Philippine Islands appears from the further provision, contained in the second clause of the paragraph, that such banks, located in the Philippine Islands, may not become member banks of one of the reserve districts.

The provisions of Section 25 of the Federal Reserve Act, under which the National City Bank obtained permission to open its branches in the Philippines, are given in full in our former brief (pp. 27-8). That Act extended the charter powers of national banks so as to authorize them to establish branches "in foreign countries *or dependencies* of the United States for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States."

The Philippine Islands were then a dependency of the United States.

This provision operated as an extension of the charter powers of national banks having the requisite amount of capital. It operated on such charters within the United States. It clearly gave to such national banks the power to open branches in any dependency of the United States, including the Philippine Islands.

The provision of the Foraker Act, to the effect that the then existing Constitution and laws of the United States should not extend to the Philippines, of course, had no effect on this subsequent Statute.

VII. The Jones Autonomy Act (39 Stat. 545, Ch. 416) entitled "An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands and Provide a more Autonomous Government for those Islands," was enacted on August 29, 1916. Prefixed to the Act is a recital of the purpose of the United States to withdraw its sovereignty over the Philippine Islands "as soon as a stable government can be established therein * * * *without in the meantime impairing the exercise of the rights of sovereignty by the people of the United States.*"

It is clear from this recital that Congress did not intend, by this Act, to waive the immunity of government instrumentalities from taxation by the Philippine Government.

Section 5 of the Jones Act provides:

> "That the statutory laws of the United States *hereafter enacted* shall not apply to the Philippine Islands except when they specifically so provide, *or it is so provided in this Act.*"

As this provision related only to statutes *thereafter enacted,* it had no effect whatever on the previously enacted National Bank Act and Federal Reserve Act. It merely established a general rule of construction for subsequent acts of Congress. It could not, of course, restrict the power of subsequent Congresses to legislate for the Philippine Islands, if they so desired.

Section 6 of the Jones Act provides:

> "That the laws *now in force* in the Philippines shall continue in force and effect except as altered, amended or modified herein until altered, amended or repealed by the legislative authority herein provided or by act of Congress of the United States."

This provision obviously refers to the Spanish body of law, which had previously prevailed in the Philippine Islands. It does not refer to Acts of Congress; nor does Section 7 of the Jones Act, giving to the Philippine legislature power to "amend, alter, modify or repeal any law, civil or criminal, continued in force by this Act" apply to Acts of Congress, since a delegation of power to the Philippine Government to

repeal Acts of Congress would have amounted to a complete surrender of sovereignty over the Philippines, contrary to the intent declared in the preamble of the Act.

The Petitioner contends (Brief, pp. 43-4) that Congress, by this Section, validated the Philippine statute taxing National Banks, passed only *one month and twenty-nine days* before, although Congress may not even have known of this very recent statute.

However, Section 6 was not intended as a declaration of *what statutes* were in force. Only statutes "now in force," that is, *valid statutes,* were continued in effect by this Section.

Section 31 of the Jones Act provides:

> "That all laws or parts of laws applicable to the Philippines, not in conflict with any of the provisions of this Act, are hereby continued in force and effect."

This provision clearly refers to Acts of Congress, and continues in effect Section 85 of the Foraker Act of 1902, relating to depositories of public money of the United States, which section recognizes, as already stated, that the National Bank Act extends to the Philippine Islands.

VIII. The same clear intent appears from the amendments to the Federal Reserve Act, enacted subsequently to the Jones Act.

By the Act of September 7, 1916 (39 Stat. 752, Ch. 461, p. 755), the words of Section 25, "to establish branches in foreign countries or dependencies of the United States," were changed so as to read, "to establish branches in foreign countries or dependencies *or insular possessions* of the United States."

This amendment was passed only nine days after the Jones Act. It is the Petitioner's contention that, by this amendment, enacted after the Jones Act, Congress intended, under the general provision of Section 5 of the Jones Act, before referred to, to amend the previously enacted Federal Reserve Act, so that it should authorize the establishment of branches of national banks only in dependencies *other than the Philippine Islands;* in other words, that this amendment repealed by implication the permission granted to national banks by the Federal Reserve Act of 1913 to establish branches in the Philippines.

The respondent submits, on the other hand, that the addition of the words "or insular possessions" makes even more clear the intention of Congress, by the Federal Reserve Act, to extend the charter powers of national banks so that they could establish branches in *all* dependencies and insular possessions of the United States, *including the Philippine Islands.*

The Virgin Islands were acquired from Denmark by a Convention, entered into August 4, 1916, and ratified by the Senate on September 7, 1916 (48 U. S. C. A., Sec. 1391, p. 358, Historical Note), on the same day that the 1916 amendment of the Federal Reserve Act was approved; and that may have been the reason for adding the words "or insular possessions" to Section 25 of the Federal Reserve Act.

By Act of December 24, 1919 (41 Stat. 378, Ch. 18) entitled "An Act to Amend the Act approved December 23, 1913, known as the Federal Reserve Act" a new section was added to the Federal Reserve Act, known as Section 25A, authorizing the organization of corporations

> "for the purpose of engaging in international or foreign banking or other international or

> foreign financial operations or in banking or other financial operations *in a dependency or insular possession of the United States,* either directly or through the agency, ownership or control of local institutions in foreign countries, *or in such dependencies or insular possessions as provided by this section,* and to act, when required by the Secretary of the Treasury, as fiscal agents of the United States."

This Act is known as the Edge Act and was further amended on February 27, 1921 (41 Stat. 1145, Ch. 73, 12 U. S. C. A., Sec. 611, p. 486), by adding the following proviso:

> "*Provided,* that nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this section as depositories in Panama or the Panama Canal Zone *or in the Philippine Islands* and other insular possessions and dependencies of the United States."

This provision specifically refers to the Philippine Islands and shows the intention of Congress that the Federal Reserve Act should extend to those Islands.

The provision of Section 19 of the Federal Reserve Act, hereinbefore quoted, providing that national banks in the Philippine Islands might not become members of the Federal Reserve System, was amended on June 21, 1917 (40 Stat. 240, 12 U. S. C. A., Sec. 466, p. 356) so as to read:

> "National banks, or banks organized under local laws, located in Alaska *or in a dependency or insular possession or any part of the United States outside the continental United States* may remain non-member banks, and shall in that

> event maintain reserves and comply with all the conditions *now provided by law regulating them;* or said banks may, with the consent of the Reserve Board, become member banks of any one of the reserve districts, and shall in that event take stock, maintain reserves, and be subject to all the other provisions of this chapter."

That amendment substituted for the words "located in Alaska or outside the continental United States" the words, "located in Alaska or in a dependency or insular possession or any part of the United States outside the continental United States," thus emphasizing the intention that the provision should apply to national banks located in the Philippine Islands, which were then a dependency or insular possession of the United States.

IX. The petitioner refers to various statutes, some of which were enacted after these taxes were imposed in 1931, namely, the National Prohibition Act (42 Stat. 223, Nov. 23, 1921); The National Industrial Recovery Act (48 Stat. 195, June 16, 1933); and the Narcotic Drugs Act (43 Stat. 657, June 7, 1924, 21 U. S. C. A., Sec. 173) and to the opinions of the Attorneys General holding that those acts did not extend to the Philippine Islands, notwithstanding the general terms of those acts, because they did not mention the Philippine Islands by name.

The National Prohibition Act extended "not only to the United States but to all territories subject to its jurisdiction, including the territory of Hawaii and the Virgin Islands." (42 Stat. 223; 27 U. S. C. A., Sec. 2.)

The National Industrial Recovery Act (48 Stat. 198; 15 U. S. C. A., Supp., Sec. 707(d)) applied to

"trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States."

The Narcotic Drugs Act extends to "the United States or any territory under its control or jurisdiction" (43 Stat. 657; 21 U. S. C. A., Sec. 173).

If these opinions have any bearing whatever upon the present question, they are wholly contrary to the action taken by the administrative officers of the Government under a still later Act. On March 9, 1933, Congress passed an Act entitled "An Act to Provide Relief in the existing National Emergency in Banking and for other purposes" (43 Stat. 1), amending a previous Act (40 Stat. 411) so as to provide that, during time of war or emergency, "the President may * * * prohibit * * * hoarding * * * of gold or silver coin * * * by any person within the United States *or any place subject to the jurisdiction thereof.*" Section 3 of the same Act (48 Stat. 2) gave to the Secretary of the Treasury power, in his discretion, to require any and all individuals, etc., to pay and deliver to the Treasurer of the United States any and all gold coin, etc.

The Act of January 30, 1934, entitled "An Act to Protect the Currency System of the United States, to Provide for the better use of the Monetary Gold

Stock of the United States and for other purposes" (48 Stat. 337, Ch. 6), contains further provisions relating to the same general subject.

Although these Acts contain no express reference to the Philippine Islands and apply only to "any place subject to the jurisdiction" of the United States, the Governor General of the Philippine Islands issued a proclamation, under date of February 21, 1934, referring to the Gold Reserve Act of January 30, 1934, in which he stated that title to the entire stock of monetary gold in the United States was vested in the United States Government. He further stated:

> "I am further advised that every person, partnership or corporation owning United States gold coins or United States gold certificates, whether domiciled or not, whether doing business or not within the continental United States, if subject to the jurisdiction and protection of the United States by their presence in the Philippine Islands, *thus including every person now residing or present in the Philippines,* must deliver any and all United States gold coins or gold certificates held by them to the United States Treasury through the National City Bank of New York, Manila Branch."

This action of the Governor General of the Philippine Islands was an administrative determination that the words "or any place subject to the jurisdiction of the United States" extended the Gold Reserve Act to the Philippine Islands. This was further recognized by the Bureau of the Treasury of the Department of Finance of the Government of the Philippine Islands, in their letter to the Manila branch of the respondent, dated May 27, 1935, as follows:

"The Government of the Philippine Islands

Department of Finance

BUREAU OF THE TREASURY

Manila

May 27, 1935

The Pro-Manager,
National City Bank of New York,
Manila.

Dear Sir:

In reply to your letter of the 22nd instant regarding exchange of U. S. silver and small coins for pesos, I wish to inform you that the reason for the order is that silver and other minor coins of the United States that are being received in this office from the public and the several institutions, including the banks, are only accumulated in our vaults for lack of demand therefor, and the only way we could dispose of them is thru their remittance to the United States Treasury for final redemption. Inasmuch as your bank is a member of the Federal Reserve System of the United States and therefore is also an instrumentality of the United States Federal Government in connection with the issue, exchange and redemption or replacement of United States currency, it was thought that you could and should dispose of the coins collected by your bank from its clients, including the direct remittance of the same to the United States Treasury, without passing them over to this Bureau.

However, the matter is now under advisement and in the meantime the order given by this Office is temporarily lifted.

Yours very truly,

ANTONIO RAMOS
Acting Insular Treasurer."

It is submitted that, if the question is at all material, it is clearly the intent of Congress to extend the National Bank Act and the Federal Reserve Act to the Philippine Islands.

The judgment of the Supreme Court of the Philippine Islands should be affirmed, with costs.

Washington, December 13, 1935.

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